

LIBRARY
SUPREME COURT, U.S.
TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 391

JOSEPH B. BRUNER, PETITIONER,

VS.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 1, 1951.

CERTIORARI GRANTED OCTOBER 22, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 391

JOSEPH B. BRUNER, PETITIONER,

VS.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

INDEX

	Original	Print
Record from U.S.D.C., Middle District of Georgia	1	1
Caption (omitted in printing)	1	
Complaint	3	1
Answer of the United States	7	2
Findings of fact and conclusions of law	9	4
Judgment	13	7
Notice of appeal	14	7
Petition for prosecution of appeal in forma pauperis and supporting affidavit (omitted in printing)	15	
Order allowing appeal in forma pauperis (omitted in printing)	18	
Designation of contents of record on appeal (omitted in printing)	19	
Clerk's certificate (omitted in printing)	21	
Excerpts from transcript of evidence	23	8
Colloquy	24	8
Plaintiff's Exhibit No. 1—Probationary appoint- ment of plaintiff	317a	14
Plaintiff's Exhibit No. 2—Report of Field Per- sonnel Action, dated June 30, 1943	317b	15
Plaintiff's Exhibit No. 3—Letter dated June 21, 1941 from War Department to J. B. Bruner, Plaintiff	317c	16

Record from U.S.D.C., Middle District of Georgia—Continued

Excerpts from Transcript of evidence—Continued

	Original	Print
Plaintiff's Exhibit No. 1—Continued		
Plaintiff's Exhibit No. 4—Report dated October 22, 1941 of Inspection by Fire Department Instructors and Inspectors	317d	17
Plaintiff's Exhibit No. 5—Letter dated February 20, 1945 from counsel of Joseph B. Bruner to War Department, General Claims Division	317i	22
Defendant's Exhibit No. 4—Personnel affidavit	317j	23
Defendant's Exhibit No. 5—Oath of office	317k	24
Defendant's Exhibit No. 6—Nomination for probational appointment	317l	25
Defendant's Exhibit No. 7—War Department's report of Field Personnel Action, dated August 24, 1944	317m	26
Motion to dismiss	318	27
Exhibit—Affidavit of A. H. Onthank and attachments	319	27
Plaintiff's response to motion for more definite statement	323	33
Plaintiff's additional response	325	33
Stipulation as to record on appeal in addition to previous designation (omitted in printing)	326	
Order directing original exhibits to be transmitted to Court of Appeals (omitted in printing)	327	
Clerk's certificate (omitted in printing)	328	
Proceedings in U.S.C.A. for the Fifth Circuit	34	34
Argument and submission (omitted in printing)	329	
Opinion, per curiam	330	35
Judgment	332	36
Clerk's certificate (omitted in printing)	333	
Order allowing certiorari	334	36
Stipulation as to printing record	336	37

1 2

[Caption omitted]

3 In United States District Court for the Macon Division of
the Middle District of Georgia

Civil Action No. 570

JOSEPH B. BRUNER, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT—Filed March 23, 1948

To the District Court of the United States for the Macon Division
of the Middle District of Georgia; and to the Honorable T. Hoyt
Davis, Judge thereof:

The petition of Joseph B. Bruner respectfully shows:

(1)

The petitioner is a resident of Bibb County, Georgia, within this
Division and District.

(2)

This Court has jurisdiction of the parties hereto and the con-
troversy herein presented under the provisions of paragraph
'Twentieth' of Section 24 of the Judicial Code, as amended.

(3)

This action is brought by the petitioner against the United States
of America to recover from its moneys owed to the plaintiff as
compensation for services rendered as an employee of the defendant.

(4)

Petitioner was employed by the defendant for the period of time,
March 11, 1941 to and including September 15, 1944, and during
such employment was a civil service employee classified in the
grade of CAF-9.

4

5

During said period of employment, and for that portion of the
same within the statutory period of limitations governing the
bringing of this action, the defendant failed and refused to pay
your petitioner for hours of work performed by him, although
the defendant was required to make such payments under the
terms of applicable statutes, regulations and executive orders

properly passed, promulgated and ordered by authorized agents, agencies and executives of the defendant.

6

By reason of the facts stated the defendant is indebted to your petitioner in the amount of \$9,000.00.

7

Despite repeated protests made by your petitioner to the defendant that he was being ordered and required to work many additional hours for which he was not being compensated, no action was taken by the defendant to alleviate the situation.

9

Despite demands of the plaintiff for payment for additional hours of work the defendant fails and refuses to accede to such demands.

WHEREFORE, your petitioner prays for judgment, upon the law and facts of the case made, against the United States of America, in the sum of \$9,000.00.

THOMAS W. JOHNSON,
Macon, Georgia.
ELLSWORTH HALL, JR.,
Macon, Georgia.

HALL & BLOCH,
Macon, Georgia,
Of Counsel.

5 Duly sworn to by Joseph B. Bruner. Jurat omitted in printing.

6 Proof of service and acknowledgment thereof (omitted in printing).

7 In United States District Court
[Title omitted]

ANSWER OF THE UNITED STATES—Filed July 12, 1949

Now comes the United States of America, defendant in the above matter, and without waiving its motion to dismiss heretofore filed, but especially insisting on both grounds of said motion, files this answer to the complaint of the plaintiff.

1

Defendant admits Paragraph One of Plaintiff's complaint.

2

Defendant denies Paragraph Two of Plaintiff's complaint.

3

Paragraph Three of plaintiff's complaint requires no answer, but defendant shows that the only services ever rendered the defendant by the plaintiff were as an officer of the United States.

4

In answer to Paragraph Four of plaintiff's complaint, defendant shows that on March 11, 1941, the plaintiff was given a probational appointment as fire chief at a salary rate of \$3200.00 per annum, and his services were to be rendered the War Department, Quartermaster Corps, Camp Wheeler, Georgia. The salary of the plaintiff was subsequently increased to the rate of \$3300.00 per annum, and his Civil Service classification or grade was CAF-9. Defendant further shows that plaintiff's appointment as an officer of the

8 United States was made under the procedure set out in the defendant's exhibit to motion to dismiss which was filed in this case on February 3, 1949, and which is part of the record in this case. Defendant hereby adopts said exhibit as part of this answer the same as if said exhibit were set out in full in this paragraph. Plaintiff resigned his position on August 24, 1944.

5

Defendant denies each and every allegation contained in Paragraphs Five, Six and Seven of plaintiff's complaint.

6

In answer to Paragraph Nine of plaintiff's complaint, defendant shows that plaintiff was never required to work overtime or in excess of the hours provided in his employment agreement. However, all of plaintiff's complaints and demands regarding the treatment afforded him, all of plaintiff's complaints and demands regarding the treatment afforded him, although without foundation and not meritorious, were always received and considered when presented to the proper authorities of defendant; and defendant further shows that the entire claim of plaintiff was thoroughly and carefully considered by the Comptroller General of the United States before this complaint was filed.

7

Further answering, defendant says that it has paid plaintiff all money which plaintiff has earned and to which plaintiff is entitled,

and defendant specifically denies that it is indebted to plaintiff in any respect.

WHEREFORE, defendant having fully answered prays that judgment be rendered in favor of the defendant, and that costs be taxed against the plaintiff.

JOHN P. COWARD,
United States Attorney.

By: JAMES H. FORT,
Assistant United States Attorney.

9

In United States District Court

[Title omitted]

FINDING OF FACT AND CONCLUSIONS OF LAW

Preliminary Statement

This case came on for trial before me at Macon, Georgia, commencing on May 8, 1950, and being concluded on May 9, 1950. The action was brought by the plaintiff for alleged overtime pay due him by the defendant for services the plaintiff rendered the defendant on a civil service fire chief and fire fighter during the war at the army installation at Camp Wheeler, Georgia. The plaintiff claimed that this court had jurisdiction of the case under the Tucker Act (28 USC, Section 1348 (d) (2)). The defendant filed a plea to the jurisdiction and a motion to dismiss on the ground that plaintiff's complaint failed to state a cause of action upon which relief could be granted. The defendant moved for a more definite statement of plaintiff's case and after a hearing on the matter the pleadings were perfected. Both sides produced a number of witnesses and considerable documentary evidence and from that I find the facts to be as follows:

Findings of Fact

1

Joseph H. Bruner was given a probational appointment of the position of fire chief on March 31, 1941. His appointment was made pursuant to his qualification under a civil service examination and his post of duty was Camp Wheeler, Georgia. His initial salary was \$3200. per annum, which was raised to \$3300. subsequently. Bruner continued in his position as fire chief until August 24, 1944, when he resigned because of his dis-satisfaction with the working conditions. The plaintiff offered no evidence concerning the nature of his appointment except that it was made by the Civil Service Commission. The defendant filed an affidavit of A. H. Onthank, Director of Civilian Personnel, Department of the Army, in which he set out

10 the nature of this appointment. There being no evidence to the contrary, this court finds as a fact that the appointment of Mr. Bruner was made in the manner as set out in the affidavit of A. H. Onthank, but the court is not bound by any conclusions which Onthank states. "The plaintiff was appointed by the Secretary of War pursuant to Article II, Section 2, Clause 2 of the Constitution."

I find that the plaintiff as fire chief at Camp Wheeler was required to be "on call" 48 hours and off duty 24 hours. During the period of "on call" duty the plaintiff was required to remain at the fire station and was kept busy a good part of the time supervising training, answering fire calls, etc. The plaintiff was unable to establish to any degree of certainty the portion of the 48 hour "on call" duty which was devoted to actual work. During the 48 hours the plaintiff did have time for food, rest and relaxation," but he was during the 48 hour period in a "stand by" or "on call" duty.

The plaintiff was paid additional compensation in lieu of overtime in accordance with the statutes and regulations. These regulations provided a percentage of an employee's base pay in lieu of overtime pay when the employee's hours of duty were intermittent or irregular. These applicable statutes and regulations were brought out at the trial and plaintiff's pay roll records show that he was paid the amounts provided by these regulations. The plaintiff was not paid any overtime pay for actual overtime hours as such.

During all the time plaintiff continued to accept the amounts paid him by the government and although he made several complaints to the army officer in charge of the fire station, Bruner never did communicate his complaint to the Commanding Officer or any higher authority. In January of 1946 the plaintiff filed his claim with the War Department and the General Accounting Office, which claim was carefully considered and reconsidered and finally denied in December of 1947. The plaintiff filed the complaint in this case on March 23, 1948.

11

CONCLUSIONS OF LAW

This Court Does Not Have Jurisdiction

This court does not have jurisdiction of this case as the plaintiff was an officer of the United States within the meaning of the Tucker Act (28 USC, Sec. 1346(d) (2)). Plaintiff was appointed pursuant to the statutes and regulations as set out in the affidavit of A. H. Onthank, Director of Civilian Personnel, Department of the Army, said affidavit being a part of the record in this case as an exhibit to defendant's motion to dismiss. I feel that this court is bound by the decision of the Court of Appeals for the Fifth Circuit in the case of *Kennedy v. U. S.*, 146 F. 2d 26.

**If This Court Had Jurisdiction Plaintiff is Not Entitled To Recover
On the Merits**

Although this court has definitely found that it does not have jurisdiction of this case, in view of the fact that this trial lasted two full days and the evidence was very comprehensive the court feels that it should go ahead and make Findings and Conclusions on the merits also.

The plaintiff is not entitled to recover as the evidence shows that under the applicable statutes and regulations and rules and under the practices prevailing at Camp Wheeler as promulgated by the Commanding Officer, the plaintiff was paid the money he was entitled to receive. The plaintiff was entitled to the money paid him "in lieu of overtime", but was not entitled to the overtime pay as was paid many other regular hourly government employees. The plaintiff's position was one excepted from the regular overtime pay acts.

3

The plaintiff has failed to establish that he is entitled to recover an exact or definite amount and the evidence in this case does not disclose any definite sum, and if the plaintiff were otherwise entitled to recover there is no basis upon which the court could make an award. The plaintiff has not submitted any legal formula or guide to the court to determine any amount.

12 Any and all rights which the plaintiff had or might have had to recover any overtime pay have been waived by him by acceptance of the pay which was tendered to him and accepted by him over the period of time for which he worked at Camp Wheeler, and he is now estopped to complain of the failure to pay for his own laches.

5

Judgment should be rendered in favor of the United States for the reasons set out in the foregoing conclusions. A judgment in accordance with these Findings and Conclusions should be prepared and submitted to the court for entry.

This the 23rd day of May, 1950.

(S.) A. B. CONGER,
United States District Judge,
Macon, Georgia.

13

In United States District Court

[Title omitted]

JUDGMENT—Filed June 7, 1950

The Court having determined that it is without jurisdiction in this case, the complaint of the plaintiff is hereby dismissed. It is further ordered that court costs in this matter be taxed against the plaintiff, Joseph B. Bruner.

Entered at Macon, Georgia, this 23rd day of May, 1950.

(S.) A. B. CONGER,

United States District Judge.

Presented by:

(S.) JAMES H. FORT,

Asst. United States Attorney.

14-20

In United States District Court

[Title omitted]

NOTICE OF APPEAL—Filed July 21, 1950

Notice is hereby given that Joseph B. Bruner, the plaintiff in the captioned matter, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this case by the Honorable A. B. Conger, Judge, on May 23, 1950.

(S.) DENMARK GROOVER, JR.,

*Attorney for Plaintiff,**614 Persons Building,**Macon, Georgia.*

HALL & BLOCH,

*614 Persons Bldg.,**Macon, Ga.,*

DENMARK GROOVER, JR.,

*Persons Building,**Of Counsel.*

21-22 Clerk's Certificate to foregoing transcript omitted in printing.

23 In United States District Court

[Title omitted]

Before: Honorable A. B. Conger, United States District Judge
At Macon, Georgia, May 8-9, 1950

TRANSCRIPT OF EVIDENCE

24

COLLOQUY

The COURT: The first case on the calendar for trial is that of Joseph B. Bruner v. The United States. What say ye for the Plaintiff?

Mr. GROOVER: The Plaintiff is ready, if Your Honor please.

The COURT: What say ye for the Defendant?

Mr. FORT: The Defendant is ready, but we would like to restate briefly our motion, which the Court has already heard, to be sure our contentions are in the record before we proceed to trial.

The COURT: Very well. You may do so.

Mr. FORT: We renew our motion now that the Court has no jurisdiction under the Tucker Act; that the Plaintiff was an officer of the United States within the meaning of the Tucker Act, the Court of Claims offers him adequate remedy and the sole remedy provided by law; that any consent to be sued by the Government must be strictly construed that the burden of establishing jurisdiction is on the Plaintiff. He has never done that at any time. The Court cannot assume jurisdiction and the Court cannot confer jurisdiction. If jurisdiction does not exist, we cannot confer it by consent.

We take the position that it is the duty of the Plaintiff, any time he is in the United States Court, to establish jurisdiction. I believe

25 that Your Honor stated, when this matter was heard in Americus on motion, that you would hear evidence at the same time as to the jurisdiction.

The COURT: Mr. Fort, it strikes me that the question of whether or not the Plaintiff in this case was an officer is a question of fact. I cannot say from the pleadings—and I may not be able to say with any degree of certainty at any stage—whether he was an officer or whether he was not an officer. My understanding is that if he was an officer, then, of course, this Court has no jurisdiction.

Mr. FORT: In fairness to the Court, I want to call attention to a case now pending in the Sixth Circuit from Kentucky—

The COURT: Dealing with this particular question?

Mr. FORT: Yes, sir. The District Judge in Kentucky held that he did have jurisdiction, that a fire fighter was an employee, not an officer, but that same Judge—

The COURT: Is that a brief or what is that you have in your hand?

Mr. FORT: This is the Government's brief in that case which is pending in the Sixth Circuit. The District Judge held jurisdiction, but throughout he held the Plaintiffs were not entitled
26 to recover on the merits. There were a number of plaintiffs in that case suing for a combined amount, I believe, in excess of \$37,000.

The COURT: Were they fire fighters?

Mr. FORT: They were fire fighters at an Army installation. We do want to read you our plea to the jurisdiction, and our second defense: that the Plaintiff has not stated a cause of action in the complaint; that he has not stated any facts upon which relief can be granted. We say that the case is controlled by the Conn case reported in the Court of Claims.

The COURT: You are now dealing with that portion of your motion that does not apply to lack of jurisdiction but that the petition does not state a cause on which relief can be granted; is that right?

Mr. FORT: Yes, sir. The Court of Claims in 1945 considered three of these cases from Mississippi, and those three cases were consolidated in one opinion and are referred to as the Conn case. He was the first man in the case. The Court of Claims, in that opinion, set out all of the statutes and regulations and held that fire fighters came within the employment regulations and deal with persons who are employed on an irregular basis or those on, say, a piecework basis. They had to have a separate statute.

27 The COURT: The question that disturbed me before and which has come back to my mind now is: Do all fire fighters occupy the same identical status? Aren't there fire fighters and fire fighters or are they all just fire fighters?

Mr. FORT: No, I think, from my recollection of these regulations, there seem to be three different categories of fire fighters. They have what they call the crash crews around an airport who stand by—

The COURT: Is there any difference if a man is in charge of a group of thirty or forty people? He ought to occupy a different status from a man who has just come on the job, if he is fire chief, in other words.

Mr. FORT: At this time I think most of the fire fighters were soldiers, and I think most of these cases deal with a fire chief.

The COURT: Was this Mr. Bruner a soldier?

Mr. FORT: No, sir, he was a chief, a civilian employee. Then they have what they call structural fire fighters who are trained to fight fire, I think, mostly in buildings, and then just the regular fire fighter which Mr. Bruner was. I don't think he had any specialty. I am not at all familiar with the regulations as to how they are paid, but we do contend that the decision of the Court

of Claims in the Conn case would control this point and we
28 have cited one or two or more District Court decisions to
the Court where similar claims have been dismissed.

The COURT: Mr. Groover, what do you say your man was?
What do you call him?

Mr. GROOVER: Your Honor, if you will look at paragraph 5 in
the pleadings, we say: "This action is brought by the petitioner
against the United States of America to recover from it moneys
owed to the Plaintiff as compensation for services rendered as an
employee of the Defendant."

The COURT: What kind of an employee?

Mr. GROOVER: Then if you will refer to our response to his motion
for more definite statement—and, if Your Honor will recall, this
motion for more definite statement was rather extensively argued
before you and considered point by point at Americus, and it was
agreed that this met the requirements of the Court at that time—
we do not specifically say what his job was. We expect the facts
to show that he was a civil service employee, employed in the
regular channel by the civil service, placed on duty as chief of the
fire department at Camp Wheeler; that his duties there, as
specified by the laws governing civil service and the duties as told
him by his immediate superiors when he went there, would com-
prise an 8-hour working day; that the length of time for
29 which he was to be paid his salary would be forty hours a
week, per annum salary; and that for such overtime as he
might have had to put in, he would be paid overtime, as authorized
by applicable statutes and executive order.

We expect the evidence to show that he continued in this status
as an employee during the period from March 11, 1941, to Septem-
ber 15, 1944. Of course, the period from March 11, 1941, to
March 23, 1942, is barred by the statute, and we are here dealing
only with the period from March 23, 1942. We expect the evidence
to show further that he continued to work as chief of the fire
department and that he was required by his immediate superiors,
under orders from the head of the engineers on the post, to be on
duty forty-eight hours and off duty subject to call twenty-four
hours, rotating all the time. For forty-eight consecutive hours,
he was on duty, and then for twenty-four hours he was off duty
but was at that time subject to call.

We expect it to show further that during this period of time
he was on duty, he was required to be on the post at all times;
that he was furnished transportation by the government so that
he would be available at all times to all points on the post. Of
course, we will not say and the evidence will not show that he
didn't sleep for forty-eight hours. There is a portion of time
30 that he was sleeping, but that during—

The COURT: Hasn't this issue been before the court on

the question of employees engaged by a person furnishing electric service? I know that issue has been up and the employees contended that, by virtue of the fact they were subject to call at any and all hours, they occupied very much the same status apparently that you contend your man Bruner occupied. I know the courts held to the contrary. I don't know where, though.

Mr. GROOVER: There was one Court of Claims case, if I am not mistaken, involving a lighthousekeeper, and they held that all of that time he spent was not working time, but part of it was standby time. However, if Your Honor please, we intend to show here that during the greater portion of that forty-eight hours, this man was actually engaged in physical labor or in the carrying out of the duties prescribed for him by his immediate superior. The only possible argument that the Government could have that this is not working time during this forty-eight hours is that portion of time during which he was asleep, and then he was required to sleep at the—

The COURT: Wasn't he just simply available? Wasn't he required to be at a place of business and available? He was not actually engaged in doing anything, was he?

31 Mr. GROOVER: He was required to be available, Your Honor, the twenty-four hours he was not on duty. For instance, the evidence will show this: the man got up every morning between six and seven o'clock; he immediately went into his duties. He had under his supervision a rotating battalion of negro fire fighters, negro troops, who were assigned to him and his two assistants for the purpose of fire control on Camp Wheeler. He immediately went into his duties of supervision and instruction. He was required to go to all the fire stations about the camp and inspect. During the course of a month, they had to pull in and recharge some 5000 fire extinguishers. Every day at the cessation of the training activities in the so-called woods-area, this man, together with his assistant who was then on duty, together with his troops, were required to go into the woods and put out fires that were caused by incendiary bullets and ammunition of various kinds. Usually about ten o'clock at night, he would begin to make up his reports after the inspectors who were made under his supervision had come in, so that the very next day he could begin his tour of inspection to see that those things that were commented on by his inspectors had been dealt with.

I think, Your Honor, we will have no trouble in establishing
32 actual physical movement about the duties of his office during the period of time that he was not asleep. There is some controversy about this sleeping time, as to whether it is merely standby time or not.

THE COURT: Why was he satisfied from March 11th, the date he was employed, until he filed the suit?

MR. GROOVER: The evidence will show, if Your Honor please, that this man on repeated occasions requested and demanded of his immediate superiors that he be placed on a 40-hour week. It will show that a special request was made by then Colonel, subsequently General, Emery to the Mayor of the City of Macon to have this man out there; that in this way he thought he was contributing his portion to the war effort; that even so he was required to work over his protests, which protests were brought to the attention of his immediate superior. The evidence will show that this—

THE COURT: You don't take the position he was making a voluntary contribution to the war effort and was working over his protest at one and the same time?

MR. GROOVER: We do not, if Your Honor please, but we don't think this man was required to quit his job when every day or at least once a week or once every two weeks, intermittently, he was promised by those in charge that this situation was temporary and that as soon as it was ironed out, he would be placed on a 40-hour week in accordance with civil service regulations. Certainly, the law wouldn't require him to quit the day he was required to work more hours than he thought was necessary, but based on the promises of those in charge, to whom the duty of establishing policy had been delegated, this man stayed there, thinking all the time the matter would be worked out. In fact, early after his departure, the matter was changed. Among the notices to the War Department was a fire inspector's report dated in 1941, which will be in evidence and which—

THE COURT: What did you call it?

MR. GROOVER: The fire inspectors of military posts of the United States made a report dated September 17, 1941, in the remarks of which he said this: "At present the fire chief and two assistant chiefs are each on duty 120 hours every week. If these chiefs continue to work these hours, they will become stale and will not give efficient service. It is recommended that two additional assistant chiefs be allowed this camp, and that present chiefs be permitted more time off duty."

That was brought home in a report specifically made for that purpose. It was brought home to those in charge. I am sure Your Honor had dealings with the military services and found that in some instances officers in charge would give immediate attention to a directive and in other instances, depending on the length of service that they had and the amount of prerogative they thought was theirs, they would insist on taking their own time about it. That is exactly what happened in this case.

THE COURT: Very well. Let's hear your evidence.

MR. FORT: Your Honor, I would like to make one further statement. We want to further assert that the Plaintiff is barred by the doctrine of laches. The first notice of this claim was to the general accounting office in 1946, about three years after it accrued. The doctrine is applied more strictly to public employees who are filing claims than it is generally. A great number of cases hold that any federal employee who has a claim must assert it promptly. Some of them are barred by as little as six months. The courts have barred them, saying that they had slipped on their rights. Then the doctrine is further that an employee who continues to accept the amount of money paid him and works under the conditions waives any right he might have had to claim any additional amount. We say that the Plaintiff is guilty of laches and that his claim is barred by his having accepted the amounts paid through the period involved.

35-317 THE COURT: Very well. Let's see what the evidence is.

WAR DEPARTMENT
WASHINGTON

May 20

RECEIVED
MAY 20 1941
OFFICE OF THE CLERK
SUPREME COURT, U.S.

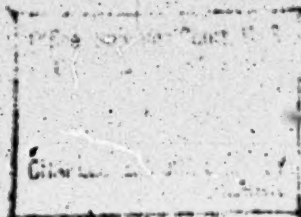
To: The Quartermaster General.

By authority of the Secretary of War, the following
probationary appointment for the period of six months is hereby
confirmed:

Name: Joseph B. Bruner.
Designation: Fire Chief (CAF-9).
Rate of pay: \$3200 per annum.
Service: Quartermaster Corps of the Army.
Station: Camp Wheeler, Georgia. Q1
Appointment made: March 11, 1941.

This appointment is indefinite (emergency).

John W. Martyn
Administrative Assistant.



DEFENDANT'S EXHIBIT NO. 4

413.2 General Inspection.

MS-4-12

October 22, 1941.

SUBJECT: Report of Inspection, Camp Wheeler,
Fire Department Instructors and Inspectors.

TO: The Quartermaster General,
Washington, D. C.

1. This headquarters is in receipt of report of visit September 17, 1941, by Fire Department Instructors and Inspectors at Camp Wheeler, copy of which is attached.

2. Attention is invited to the fact that the supervisory personnel in the Fire Department now on duty at Camp Wheeler exceeds allowance covered in Type Set-up for this size camp.

3. As this report was made by personnel operating directly from the Office of The Quartermaster General, no recommendation for remedial measures have been initiated by this headquarters.

4. It is requested, that this headquarters be advised of action taken by the Office of The Quartermaster General, and if further action is to be taken by this headquarters.

For the Commanding General:

L. B. CLAPHAM
Colonel, A. G. S.
Adjutant General

1 Encl.
Copy of Report.

cc: C-4

OCT 24 1941

13
det
4
Ray
M.C.
413.2 - General Inspection
10-24-41

PLAINTIFF'S EXHIBIT NO. 3

16

Washington, D. C.,
June 21st, 1911.

Mr. J. B. Bruner,
Chief Fire Department,
Camp Wheeler, Georgia.

Dear Chief:-

I received your letter dated June 30th. I have been away that is the reason I have not answered you before.

Chief, I don't know just what to tell you about your time off. I know that forty eight hours is too long for a man to be on duty. It will cause him to go stale and he will not give his best service, but there is nothing in regulations stating how many hours you will work, but you can get a ruling on this from the Civil Service of your district. I am sorry that I cannot help you in this matter. Perhaps in a short time you will get some good news about what personnel you will have for your Fire Department.

I hope to pay you a visit in the near future.

Respectfully,

R. E. Lloyd
R. E. LLOYD,
Chief of Fire Instructors
WAR DEPARTMENT.

317c

PLAINTIFF'S EXHIBIT NO 2

W.D., C.P. Div., Form No. 50
(Appd. Apr. 27, 1942)

WAR DEPARTMENT

REPORT OF FIELD PERSONNEL ACTION

HEADQUARTERS CAMP WHEELER, GEORGIA
(Station)

30 June 1943

(Date)

hve

To:

1. Name **Bruner, Joseph E.**
 2. Nature of Action **Administrative Promotion**
 3. Effective Date **1 July 1943**

9. C. S. C. REPORT
SERIES

P - 43 - 1422

10. CIVIL SERVICE
AUTHORITY

11. Appropriation

E.S.A. 1942-43; SCM 4 P 321-
01 A 0808-23

12. Date of Birth

17 July 1904

13. Subj. to Ret. Act
Yes No14. If Separation, Last
Paid Through15. Bureau Authority for
Action or Position

Personnel Allotment

Pos. #1005

	From-	To-
4. Position	Fire Chief	Fire Chief
5. Grade and/or Salary Allowances	CAF-9, \$3200 p/a (no allowances)	CAF-9, \$3300 p/a (no allowances)
6. Bureau and/or Other Unit	4th Serv. Comd. (RU)	4th Serv. Comd. (RU)
7. Headquarters and duty Station	Camp Wheeler, Georgia.	Camp Wheeler, Georgia.
8. Departmental or Field	FIELD	FIELD

REMARKS: Probational Appointment, 11 March 1941.
Original Position #1005.

Copies To: (Check)

1. ☐ District Manager--Temporary series only.
 2. ☐ C. S. C. copy attached--Permanent series only.
 3. ☒ Employee. (Original) For the Commanding Officer:
 4. ☐ Civ. Pers. Field Office--Change in name of
Graded employee only:
 5. ☒ Payroll Office, Camp Wheeler, Ga.
(Other)

16.

W. E. BRUNER, JR.,

Captain, Infantry,

Chief, Civilian Personnel Branch.
(Title)

ZONE CONSTRUCTING QUARTERMASTER
ZONE IV
494 Spring Street, N. W.
Atlanta, Georgia

-18-

FIRE INSPECTION REPORT

STATION: CAMP WHEELER, GEORGIA.

DATE SUBMITTED: Sept. 17, 1941.

INSPECTOR: R. E. Lloyd & V. B. Robinson

GENERAL

1. Total ultimate strength of post, including contemplated future increases. 12000
2. Present population of Post, Camp, or Station. 17322
3. Type of construction in per cent:
Permanent _____ Temporary 100% Tent Camp _____
4. List Fire Department Personnel:

Title	Name	Experience (yrs.)	(mo.)
Post Fire Marshal	Ma J. E. L. Littleton		
Chief	Joe H. Hunter	17	
Assistant Chief	H. B. Bates (17 yrs.)	20	

5. Give total number of fire fighters assigned to Post Fire Department.
Enlisted 24 Civilian 0
6. Give total number of non-commissioned officers in fire department on post. (exclusive of above) 1

WATER SYSTEMS & FIRE HYDRANTS

1. Is present water supply adequate for fire protection in all areas, at all times? Yes
(If not, report exact location of questionable areas.)
2. Are all hydrants located properly with respect to:
Buildings? Yes Roads? Yes Proper facing? Yes
3. Are hydrants in serviceable condition? Yes
(Spot check $2\frac{1}{2}$ " and $4\frac{1}{2}$ " outlets with female coupling.)

FIRE ALARM SYSTEM

1. Is present alarm system adequate? Yes
(If not, check with Post Signal Officer.)
2. Is system being used for calls other than fire calls? No
3. Is record kept of all alarms? Yes (QM Form 119)
4. How often is fire alarm system tested? Daily

FIRE EXTINGUISHERS

1. Are all extinguishers in serviceable condition? Yes
(Spot check.)
2. Are extinguishers placed in proper locations? Yes
3. Is number of extinguishers on hand sufficient? No - 21 If not, has requisition been submitted? No

317e

- 19-
- Are all Soda & Acid, Foam, and Carbon Tetrachloride type extinguishers tagged with the date of last charging and initialed by charger? Yes
 - Is record kept, in fire station, of fire extinguisher serial number, building location, and date of last charging? Yes

SPRINKLER SYSTEMS

- Are all post indicator valves in open position? Not completed
- Are all valves on sprinkler system sealed open? Yes
- Are all sprinkler heads free from obstructions? (Storage material, etc., should not be stacked higher than 18" below the sprinkler line.) Yes

FIRE DEPARTMENT

- Give location of stations by name or number and truck number of pumper assigned to each.

# 1 Headquarters	80400 & 80499
# 2	80447 & 80427
# 3	80446 & 80490

- Is Fire Chief complying with A.R. 30-1515? Yes
A.R. 30-1500? Yes
- Is Fire Chief getting all information pertaining to fire prevention sent from the Office of The Quartermaster General? Yes
- Is a map of all areas showing location of fire hydrants and alarm boxes posted in fire stations? Yes
- Are proper records being kept at stations? Yes
- Do all fire department personnel understand duties? Not all of
- How many men are on duty at station during meals? 1
- Is there sufficient fire fighting clothing for personnel? No
- Is alarm running schedule satisfactory? Yes
- Is alarm and telephone watch maintained at headquarters and outlying stations? Yes
- Are pumps in good operating condition? Yes
- Is condition of accessory equipment on pumps satisfactory? Yes
- Is condition of 2 1/2" hose satisfactory? Yes Chemical hose? Yes Soft suction hose? No
- Has requisition been submitted for replacements or needed equipment? Yes
- Is 2 1/2" hose changed on apparatus each 30 days? Yes
- How many pump and hose drills are held weekly? 1
- Is number of truck drivers and pump operators sufficient? Yes
- How many firemen are used in daily inspections? 1
- Who corrects complaints of daily inspectors? Fire Chief
- Is record being kept of daily inspections? Yes

GENERAL REMARKS & RECOMMENDATIONS

- c1 Shortage of 1-Gal. Type C. T. C. in Laundry, Motor Shops and Motor pools. These will be requisitioned.
- c2 Due to frequent change in fire department personnel, it is impossible for all men to properly understand duties as fire fighters. However, 8 drills are held each week to familiarize these men with their duties.
- c3 Requisition is to be made for additional clothing.
- c4 In this camp, as in other camps visited, found 4 1/2" soft sections pulling loose at connections, and in some instances bursted. Requisition is being made for replacement of bursted sections.

At present the Fire Chief and 2 Asst. Chiefs are each on duty 120 hours every week. If these chiefs continue to work these hours, they will become stale and will not give efficient service. It is recommended that 2 additional Asst. Chiefs be allowed this camp, and that present chiefs be permitted more time off duty.

This camp is using fire hose for watering grass in almost all sections of the camp. This is in violation of regulations, and should be discontinued at once. It is suggested that smaller or single jacket hose be procured for this purpose.

At Headquarters Fire Station, fire trucks are being used to transport the personnel to and from their meals. This is in violation of regulations and should be discontinued immediately.

A Pressure Gauge, to indicate water pressure in mains should be installed in Headquarters Fire House, from which gauge an hourly check could be made and recorded. This will serve to keep the fire department posted at all times as to water pressure and supply in mains.

Provisions should be made for an office and sleeping quarters for the white Fire Chiefs on duty with the Fire Department. The crowded conditions at the fire stations, wherein the white chiefs are quartered and sleep with from 20 to 25 colored troops, is unsatisfactory. A small building erected in the vicinity of Headquarters Fire Station would remedy this condition. The ideal solution to the above condition, and to give better fire protection to the camp, would be the employment of white civilian personnel for the camp fire department.

Fire Department Instructor, Q.M.C.

OCCON, IV 1000,
413.3-General Inspection.

ilities) 11-4-30
OF. 100, 2000
400 Spring Street
Date October 22, 1941.

USE ONE SIDE ONLY

MEMORANDUM CARRIER SHEET

SUBJECT: Report of Inspection, Camp Wheeler,
Fire Department Instructors and Inspectors.

(1) G-4

(2) A.G.

For concurrence in attached letter,
this date, to The Quartermaster General,
reference above subject, and calling
attention to supervisory personnel at
Camp Wheeler exceeding allowance covered
in Type Set-up for this size camp.

For signature.

RECEIVED

OCT 23 1941

G-4, 4th CA

RECEIVED
1 OCT 24 1941
AM - 1000 CCM

(2) Coy 5

Concur in attached letter

one

17.3
JMS

(3) A.C.

Attached letter approved.

JMS
Coy-5

113.3 - per Group

February 20th 1945.

War Department,
General Claims Division,
General Accounting Office,
Washington, D. C.

Gentlemen:

I have been retained by Mr. Joseph B. Bruner of this City to present a claim before your department for overtime pay due him while he was employed as Fire Chief at Camp Wheeler, Georgia. He contends that he was employed on March 11, 1941 under an agreement that he would work 8 hours a day for 7 days each week. On June 1st he was transferred to U. S. engineers Division from the Quartermaster corps and was placed under Lt. Col. Litleton and performed the same services; that Col. Litleton required him to work 48 hours on duty and 24 hours off duty which made 112 hours each week, with no overtime. This arrangement continued until July 1942 at which time he was given 4 hours overtime each week until January 15th 1943. After January 15th 1943 he was given a percentage raise on his salary to take care of overtime. Under these facts he claims he is entitled to overtime pay from June 1st 1941 until July 1942 for the difference between 44 hours and 112 hours for each week and from July 1942 until January 15th 1943 for the difference between 50 hours and 112 hours for each week.

My client claims that an inspector, Mr. R. L. Lloyd, Chief of Fire Inspectors for the War Department, came to Camp Wheeler and protested to Col. Littleton about these hours, and this should be shown in an inspection report at Camp Wheeler; also, that Mr. Robertson, in the 4th Corps engineers office, also wrote a protest against these hours.

I am asking that this case be considered as early as possible. It is possible that an investigator be designated to make an investigation of my client's claim at this location and that compensation be ordered for the time such investigation shows my client entitled to.

Very respectfully,

o/vr.

PLAINTIFF'S EXHIBIT NO. 4

Standard Form No. 62
Approved by the Bureau
of the Budget
May 18, 1941

PERSONNEL AFFIDAVIT

WAR DEPARTMENT

Q.M.C. (UTILITIES)

CAMP WHEELER, GEORGIA

(Department or agency)

(Bureau or division)

(Place of employment)

Name Joseph B. Brdner, Fire Chief, Udel., \$3,200 per annum

(Give name, initial or initials, if any, and last name. Print or type)

Section 9A of Public 252—76th Congress, approved August 2, 1939, otherwise known as the "Hatch Act," provides:

"(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any Act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States:

"(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any Act of Congress for such position or office shall be used to pay the compensation of such person;"

It is provided in various appropriation acts that no part of the funds so appropriated shall be used to pay the salary or wages of any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence, and that an affidavit shall be considered *prima facie* evidence that the person making the affidavit does not advocate, and is not a member of an organization that advocates, the overthrow of the Government of the United States by force or violence. Such acts provide further that any person who advocates, or who is a member of an organization that advocates, the overthrow of the Government of the United States by force or violence and accepts employment, the salary or wages for which are paid from any such appropriation, shall be guilty of a felony and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both, and that the above penalty shall be in addition to, and not in substitution for, any other provisions of existing law.

I, Joseph B. Brdner, do solemnly swear (or affirm) that I have read and understand the foregoing; that I do not advocate the overthrow of the Government of the United States by force or violence; that I am not a member of any political party or organization that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am an employee of the Federal Government, I will not advocate nor become a member of any political party or organization that advocates the overthrow of the Government of the United States by force or violence.

(Signature of employee)

Subscribed and sworn to before me this _____ day of _____ A. D., 19____

at _____

(City or place)

(State)

[SEAL]

14 1944

201-Brdner, Joseph B

Standard Form No. 9
(Approved by the President, May 22, 1926)

OATH OF OFFICE

Prescribed by Section 1757, Revised Statutes of the United States

WAR DEPARTMENT
(Department or Establishment)

Quartermaster Corps, Camp Wheeler, Ga.
(Bureau or Office)

I, Joseph B. Bruner, do

(Name in full, printed or typed)

solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. SO HELP ME GOD.

Joseph B. Bruner
(Signature of Appointee)

Subscribed and sworn to before me this 11th day of March, A.D. 19 41

at Camp Wheeler, Ga., Georgia
(City or place) (State)

[SEAL]

Margaret S. Jones
Notary Public, Bibb County, Ga.

Note.—If the oath is taken before a Notary Public the date of expiration of his commission should be shown.

Commission Expires September 2, 1941.

Position to which appointed Fire Chief

Date of entrance on duty March 11, 1941

U. S. GOVERNMENT PRINTING OFFICE

16-5223

317k

DEFENDANT'S EXHIBIT NO. 6

29107 am

HEADQUARTERS INFANTRY REPLACEMENT CENTER
Office of the QuartermasterCamp Wheeler, Georgia
April 14, 19412Q1, Bruner
Joseph B.

SUBJECT: Nomination for Probational Appointment.

TO: The Quartermaster, Hq. 4th Corps Area
Old Post Office Building
Atlanta, Georgia

THRU:

The Manager, 5th Civil Service District
New Post Office Building
Atlanta, GeorgiaFifth U.S. Civil Service District.
Office of the Manager, Atlanta, Ga.Selection regular for probational
appointment subject to receipt and
approval of funds. Pen. Code.

APR 17

Date

Signed

1. It is recommended that Joseph B. Bruner be probationally appointed to the position of Fire Chief, CAF-9, by selection from Certificate No. 29107, Amended. Mr. Bruner is subject to the retirement act.

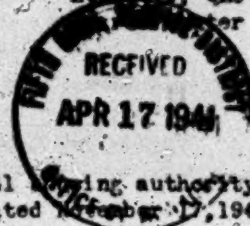
2. Job sheet in quadruplicate is attached.

a. New Position:

Date of authority of the Quartermaster General to fill position: Radio P-475 C, OQMG, dated November 17, 1940.
File number: 230.14-Adm., Camp Wheeler.
Salary to be paid: \$3,200 per annum.
Appropriation from which paid: F & Q A Project No. 1, Q# 2274 Pl 0110 A 0535-01.
Whether funds available: Funds are available.

7 Incls.

- Incl. 1 - Oath of Office
- Incl. 2 - Std. Form 6 (In Dupl.)
- Incl. 3 - Form 2413
- Incl. 4 - Form 124-B
- Incl. 5 - Job Sheet (In Quad.)
- Incl. 6 - Cy. letter OCAC dated January 27, 1941 showing authority received from OQMG in Radio P 475 C, dated November 17, 1940 (Dup.)
- Incl. 7 - Finger Print Chart.

A. T. WRIGHT
Lt. Col., OMC

DEFENDANT'S EXHIBIT NO. 7

W.D., C.F.DIV., Form No. 50
(Appd. Apr. 27, 1942)

WAR DEPARTMENT

REPORT OF FIELD PERSONNEL ACTION
ARMY SERVICE FORCES
HEADQUARTERS CAMP WHEELER, GEORGIA
(Station)August 24, 1944
(Date)

To: Civil Service Commission, Washington, D. C.

1. Name

Joseph B. Bruner

2. Nature of Action Resignation

3. Effective Date August 24, 1944 (9 hrs.)

4. Position Fire Chief

5. Grade &/or
Salary CAF-9, \$4300 p/a
Allowances (No allowances)6. Bureau &/or
Other Unit 6th SS, AMF,
(Post Engineer,
Fire Department)7. Headquarters
and Duty Station Camp Wheeler, Georgia8. Departmental
or
Field

FIELD

FIELD

REMARKS:

Not indebted on account of unearned leave.
Resigned due to the fact he was dissatisfied with
working conditions. Leave of absence with City
of Moon expired.
Last day of active duty: May 27, 1944.

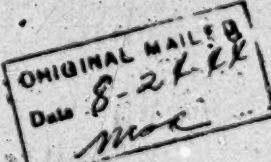
NO VETERAN STATUS

COPIES TO: (Check)

1. District Manager--Temporary series only.

2. C.S.C. copy attached--Permanent series only.
For the Commanding Officer:3. ☒ Employees

4. Civ. Pers. Field Office--Change in name of graded employee only.

5. ☒ Payroll Section, Camp Wheeler, Georgia.
(Other)Atty. Chief, Civilian Personnel Branch.
(Title)

318

In United States District Court

[Title omitted]

Now comes the United States of America, defendant in the above-stated case, and moves the Court as follows:

MOTION TO DISMISS—Filed May 19, 1948

1

To dismiss the complaint because this Court does not have jurisdiction of the subject matter.

2

To dismiss the action because the complaint fails to state a claim against the defendant upon which relief can be granted.

JOHN P. COWART,
United States Attorney,
JAMES H. FORT,
Assistant U. S. Attorney,
Attorneys for the Defendant.

319

In United States District Court

[Title omitted]

EXHIBIT TO MOTION TO DISMISS—Filed February 3, 1949

Now comes the United States of America, defendant in the above-stated case, by and through its attorney and with leave of the Court first had, files hereto an affidavit of A. H. Onthank, Director of Civilian Personnel for the Department of the Army, and attachments thereto, as an exhibit to the motion to dismiss filed by the defendant on May 19, 1948.

JOHN P. COWART,
United States Attorney,
JAMES H. FORT,
Assistant United States Attorney,
Attorneys for the Defendant.

ORDER

The foregoing exhibit to motion to dismiss is allowed filed subject to objections by the plaintiff. A copy of the exhibit is to be served on counsel for the plaintiff by mailing same to counsel.

This 2 day of February, 1949.

T. HOYT DAVIS,
United States District Judge.

AFFIDAVIT OF A. H. ONTHANK AS DIRECTOR OF CIVILIAN PERSONNEL,
DEPARTMENT OF THE ARMY IN THE CASE OF JOSEPH B. BRUNER
VS. THE UNITED STATES

STATE OF VIRGINIA,
ARLINGTON COUNTY, ss:

I, A. H. Onthank, being first sworn on oath depose and says:—

That I am Director of Civilian Personnel for the Department of the Army, that I am authorized to represent the Secretary of the Army in matters pertaining to civilian personnel administration, that Camp Wheeler, Georgia, was a field installation of the War Department until its inactivation and that the authority for employment of civilian personnel in the field service of the War Department during the period prior to September 1944 was as outlined below.

1. Article II, section 2, clause 2 of the Constitution provides for appointments to the Federal service as follows:

"He (The President) by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

2. Pursuant to the provisions of the Constitution quoted above, the Congress provided statutory authority for appointments in the act of 26 June 1930 (46 Stat. 817; 5 U.S.C. 43). This act authorizes employment of such number of employees as may be appropriated for by Congress from year to year, with the further provision "That the head of any department or independent establishment may delegate to subordinates, under such regulations as he may prescribe, the power to employ such persons for duty in the field services of his department or establishment."

3. On 23 December 1941, the Secretary of War issued Orders "N" which directed the Chiefs of Bureaus, Arms and Services to delegate appointing authority to their field establishments prior to 1 February 1942. Personnel actions affecting employees whose positions were graded pursuant to the Classification Act of 1923 (Chapter 13; 5 U.S.C.) were subject

to confirmation by the Office of the Secretary of War. Personnel actions affecting the incumbents of ungraded positions could be taken independently by the field establishments. Copy of Orders "N" is attached as inclosure #1 and made a part hereof.

4. On 13 August 1942, the Secretary of War issued Orders "M", to be effective 1 September 1942. This Order rescinded the delegation of authority established by Orders "N" dated 23 December 1941 and delegated authority to the Commanding Generals of the Department's various components to take final action on all personnel transactions in the field services, except on separations with prejudice. Orders "M" is attached as inclosure #2 and made a part hereof.

5. To the best of my knowledge, belief and information the plaintiffs herein were employed either under direct appointment by field officers acting for the Secretary of War (if appointed prior to September 1940), under appointment by the commanding officer of the local military installation which appointment was confirmed by the Secretary of War (if appointed between September 1940 and 1 September 1942) or under direct appointment by the local commanding officer acting for the Secretary of War pursuant to authority delegated to such commanders by the above cited Orders "M". Regardless of such dates or modes of employment, however, on information and belief I certify that they were "officers of the United States" as that term has been applied in *Kennedy v. U. S.*, 148 F.2d 26 (as to appointments prior to 1 September 1942) and in *Henderson v. U. S.*, 74 F. Supp. 343 (as to appointments subsequent to 1 September 1942).

Further deponent sayeth not.

A. H. ONTHANK,
Director of Civilian Personnel.

Subscribed and sworn before me this 25th day of January, 1949.

A. F. SPADÁ,
Notary Public.

My Commission Expires Sept. 14, 1952.

322A

WAR DEPARTMENT,

WASHINGTON, August 13, 1942.

ORDERS:

1. The very rapid increase in the number of civilians required throughout the War Department to prosecute the war effectively demands that personnel be obtained and put to work quickly. This will be facilitated by the establishment of simple procedures for completing personnel actions in the lowest operating echelons practicable, and by the operation of judicious controls to insure the maintenance of uniform standards.

2. The Office of the Secretary of War will take the necessary steps to decentralize to the proper operating units in both the departmental and field services of the War Department the processing of all personnel actions. In order to provide experienced personnel to the departmental and field services so that they can operate satisfactorily under this program, arrangements will be made prior to September 1 to transfer from the Office of the Secretary of War available personnel to the payrolls of the operating units, and the Office of the Secretary of War will upon request assist in training any additional persons required.

3. Authority is hereby delegated to the Commanding Generals, Services of Supply, Army Air Forces, and Army Ground Forces, to take final action on personnel transactions in the field service, cept on separations with prejudice.

4. The Civilian Personnel Division of the Office of the Secretary of War will, through representatives stationed in the operating personnel offices of the departmental service, approved for the War Department the allocation of all classified positions and will review all instruments pertaining to personnel transactions prior to approval by the Secretary of War. In the field service, representatives of the Civilian Personnel Division of the Office of the Secretary of War will assure compliance in action taken under the above delegated authority with Departmental policies, standards, and procedures; Civil Service rules and regulations; Comptroller General's decisions; and established legal requirements; by the appropriate audit and inspection of such actions and will receive all appropriate information to effect the same.

5. These orders will be effective September 1, 1942. Orders N of December 27 1941, Orders I of July 3, 1942, and any or all portions of any other orders or memoranda conflicting with the provisions of these orders are rescinded as of September 1, 1942.

HENRY L. STIMSON,
Secretary of War.

M.

322B

Corrected Copy.

WAR DEPARTMENT,
WASHINGTON, December 23, 1941.

ORDERS:

SUBJECT: Emergency Procedures re Civilian Personnel.

1. *Departmental Service.*—As an emergency measure to expedite personnel actions, Chiefs of Bureaus, Arms and Services are authorized to adopt the following procedure for the duration of the emergency. The complete procedure relating to departmental personnel in this Order will be effective upon application and approval, but in no event prior to January 1, 1942.

(a) *Appointments:* Chiefs of Bureaus, Arms and Services are authorized to deal directly with the U. S. Civil Service Commission to effect appointments, including reinstatements and transfers from other Agencies, in the departmental service, subject to confirmation by the Secretary of War. Requests for confirmation (Form CP-55) must be submitted within twenty-four hours following date of employee's entrance on duty.

(b) *Classification:* Control of classification being vested in the Secretary of War, representatives of this Office will be assigned to Bureaus to assist in the preparation of job sheets and to give immediately the required prior approval for the Department.

(c) *Changes in status:*

1. Actions which do not result in changes in salary may be effected by Bureaus with immediate report to and confirmation by the Secretary of War. Actions resulting in change in salary must have prior approval of the Secretary of War.
2. *Administrative Within-Grade Promotions:* At least two weeks prior to the quarterly automatic promotion date the Secretary of War will send to each Bureau a list of the names of employees eligible for administrative promotion at that time. Unless error is reported by Bureaus within one week thereafter, the Office of the Secretary of War will process the necessary papers to effect such administrative promotions by the pay day following that quarterly automatic promotion date.

(d) *Transfers:* Transfer with change in salary among Bureaus within the War Department will be handled as in c above.

322C (e) *Suspensions:* Bureaus have authority to suspend employees from duty subject to confirmation by the Secretary of War. Request for confirmation must be submitted within twenty-four hours.

(f) Separations: Such actions, including resignations and furloughs, will continue to be processed by the Office of the Secretary of War, in accordance with present practices. Requests for discharge under Public Law No. 671, 76th Congress, will be handled in accordance with memorandum to Chiefs of Bureaus, Arms and Services, February 15, 1941 (OSW 5/41).

(g) Travel: Until presently recommended legislation is approved, requests for permanent change of duty station at Government expense will be submitted in accordance with Civilian Personnel Division Memorandum No. 138, September 22, 1941.

(h) Clerical Recruitment: Stenographers, typists and messengers will continue to be recruited by the central clerical recruitment service of the Office of the Secretary of War.

2. Field Service.—

(a) Graded Employees: Chiefs of Bureaus, Arms and Services are directed to delegate authority to their field establishments prior to February 1, 1942, to process through the appropriate Field Office of the Office of the Secretary of War all personnel actions for graded employees in positions with salaries up to and including at least \$4600 per annum, except discharges with prejudice, and discharges pursuant to Public Law No. 671, 76th Congress. Other actions, including the above exceptions, will be processed through the Office of the Secretary of War, Washington, D. C.

(b) Ungraded Employees:

1. Confirmation of appointment, change of Status and separation of ungraded employees will not be made hereafter by Field Offices of the Office of the Secretary of War. However, a copy of all Civil Service Forms 4A will be forwarded promptly by all Bureaus to the Office of the Secretary of War, Washington, D. C.
2. Rates of pay: To promote uniformity of rates of pay by localities among the ungraded employees of the Bureaus of the War Department, the Secretary of War will specify policies and procedures to that end.

322D

3. The statutory responsibility of the Secretary of War for control of civilian personnel in the War Department, for formulating policies and procedures and providing assistance to the Bureaus, Arms and Services in respect thereof, remains unchanged. Accordingly officials in the departmental and the field services are requested to discuss with the Civilian Personnel Division, Office of the Secretary of War and its Field Offices, any pertinent problems. The Office of the Secretary of War must, of course, review programs and actions of Bureaus and their

appointing officers from time to time for consistency with established policies and procedures. Any inconsistencies will be brought to the attention of Bureaus for immediate correction. For the above purpose, representatives of the Office of the Secretary of War are authorized to examine Bureau operations pertinent to civilian personnel and report thereon.

4. All existing civilian personnel policy and procedural directives, not inconsistent with the above, continue in full force and effect.

HENRY L. STIMSON,
Secretary of War.

N

323

In United States District Court

[Title omitted]

PLAINTIFF'S RESPONSE TO MOTION FOR MORE DEFINITE STATEMENT
—Filed May 12, 1949.

Comes now the plaintiff and files this his response to plaintiff's motion for more definite statement.

1

In response to paragraph 1 (a) of the said motion, plaintiff says he was employed in the Fire Department at Camp Wheeler, Georgia; for the Quartermaster Corps, Engineer and 4th Service Command, all of which facts are well known to defendant.

2

In response to paragraph 1 (b) of the said motion, plaintiff says he was a fire chief, C A F 9, and his duties were to supervise the fire equipment and fire fighting at Camp Wheeler.

3

In response to paragraph 1 (c) of said motion, the plaintiff says he was employed by Colonel Wright, the then Quartermaster of Camp Wheeler, as to the said officer's authority, that is information peculiarly within the scope of defendant's own knowledge and not within the plaintiff's.

4

In response to paragraph 2 (a) of the said motion, plaintiff says that all of said information is within the scope of defendant's own

324 knowledge, that it is a matter of evidence and that plaintiff should not be required to furnish the same; and he says the same in response to paragraphs 2 (b), (c) and (d) of the said motion.

5

In response to paragraph 2 (e) of said motion, plaintiff says that those are matters of which defendant is fully cognizant and are laws of the United States and orders of the President of the United States.

6

In response to paragraph 3 (a) of said motion, plaintiff says that is a matter of evidence which will be adduced on the trial of said case.

7

In response to paragraph 4 (a) of said motion, the plaintiff says said protests were made mostly orally but some in writing, and in response to subparagraphs (b) and (c) of the same paragraph, he says the protests were made to one Lt. Col. L. E. Littleton, and to one Capt. Fugate who were the officers in charge of his department and that they were made on numerous occasions, the exact dates of all of which he does not remember and he was ordered to work those hours by the said Lt. Col. Littleton.

THOMAS W. JOHNSON,
HALL & BLACK,
Attorneys for the Plaintiff.

CERTIFICATE OF SERVICE (Omitted in printing)

325-327

In United States District Court

[Title omitted]

PLAINTIFF'S ADDITIONAL RESPONSE—Filed July 1, 1949

Comes now the plaintiff and files this his additional response to defendant's motion for a more definite statement.

1

In additional response to paragraph 2(a) he says he worked, as was required of him, forty-eight hours on and twenty-four hours off. He maintained this work during the entire period of his employment and was required to maintain it by the authorized agents of the defendant, as set out in the original petition and first response.

2

In additional response to paragraph 2(b) he says that the rate of compensation at all times during the period of his employment was \$3200.00 until he was raised to \$3300.00.

3

In additional response to paragraph 2(c) plaintiff says that he received compensation at his regular rate and only to that extent during his employment. He did not receive any overtime compensation although he worked many overtime hours, as was required of him.

4

Repeated demands have been made on the defendant to make compensation to him for his overtime work, being compensation as required by law, but despite those repeated demands, defendant has refused and still refuses to pay the same.

5

It is, for compensation for these overtime hours which he was required to work and for which he received no compensation, that plaintiff files this civil action.

THOMAS W. JOHNSON,
HALL & BLOCH,
Attorneys for Plaintiff.

328-329 Clerk's Certificate to foregoing transcript omitted in printing.

330

In the United States Court of Appeals
for the Fifth Circuit

No. 13,411

JOSEPH B. BRUNER, Appellant,

versus

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the
Middle District of Georgia.

OPINION OF THE COURT FILED—June 1, 1951

Before HUTCHESON, Chief Judge, and SIBLEY and STRUM,
Circuit Judges.

PER CURIAM: Brought under the Tucker Act, 28 U.S.C. Sec. 1346(d)(2), to recover moneys claimed to be due plaintiff for

services rendered under contract with the United States and not paid for, plaintiff's suit was met by a motion to dismiss on the ground that, under the controlling decision in this circuit, *Kennedy v. United States*, 146 F (2) 26, plaintiff was an officer of the United States, and the court was without jurisdiction.

331 The district judge, on evidence sufficient to support his conclusion, found: that the plaintiff was appointed by the Secretary of War, pursuant to Art. II, Sec. 2, Clause 2, of the Constitution; that he was an officer of the United States; and that the court was without jurisdiction of his claim. So determining, he dismissed the suit on that ground, and this appeal followed.

We agree that the case is ruled by *Kennedy v. United States*, *supra*, and that the judgment should be affirmed.

Affirmed.

332 In United States Court of Appeals

JOSEPH B. BRUNER,

versus

UNITED STATES OF AMERICA.

No. 13,411

JUDGMENT—June 1, 1951.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

333 Clerk's Certificate to foregoing transcript omitted in printing.

334-335 Supreme Court of the United States

No. 87, Misc.—October Term, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—October 22, 1951.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of cer-

forari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 391 and placed on the summary docket.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

336-337 In the Supreme Court of the United States

October Term, 1951

No. 391

STIPULATION AS TO PRINTING OF RECORD—Filed December 4, 1951

Subject to this Court's approval, it is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the printed record may consist of the following:

- (1) All the pleadings
- (2) All proceedings on appeal
- (3) Petitioner's exhibits 1, 2, 3, 4 and 5
- (4) Respondent's exhibits 4, 5, 6 and 7
- (5) Pages 1-12 of the transcript of evidence

It is further stipulated and agreed that the parties hereto may refer to the portions of the certified Transcript of Record not included in the printed record.

CHARLES J. BLOCH,
Counsel for Petitioner.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 3, 1951